

**UNITED STATES AIR FORCE  
COURT OF CRIMINAL APPEALS**

<b>UNITED STATES</b>	)	<b>No. ACM 40559</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>Timothy D. HARNAR</b>	)	
<b>Staff Sergeant (E-5)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Panel 3</b>

On 13 September 2023, a general court-martial consisting of the military judge sitting alone convicted Appellant, consistent with his pleas and pursuant to a plea agreement, of two specifications of indecent recording, in violation of Article 120c, Uniform Code of Military Justice, 10 U.S.C. § 920c. The military judge sentenced Appellant to a bad-conduct discharge, confinement for 10 months, total forfeiture of pay and allowances, reduction to E-1, and a reprimand.

Appellant's case was docketed with this court on 17 January 2024. A cursory review of the record revealed several apparent irregularities, including at least missing exhibits from the preliminary hearing officer's report, erroneous notations on the entry of judgment regarding when prejudice attaches to dismissal of certain specifications, and completion of the convening authority's decision on action memorandum without providing the required timeframe for Appellant to respond to matters submitted by the victim pursuant to Rule for Courts-Martial 1106(d)(3).

Accordingly, it is by the court on this 23d day of January, 2024,

**ORDERED:**

Not later than **29 January 2024**, counsel for the Government shall **SHOW GOOD CAUSE** as to why the court should not remand this record for completion and correction of the record. In so doing, the Government may file motions to attach documents, including declarations or affidavits explaining the irregularities noted in this order and any other portions of the record that is determined to be missing or defective hereafter.



FOR THE COURT



FLEMING E. KEEFE, Capt, USAF  
Deputy Clerk of the Court



correct the EOJ, but given the other errors noted by this Court, the base legal office is better situated to accomplish these corrections. Thus, the United States agrees that remand for correction of the noted errors is appropriate.

Undersigned counsel confirmed on 26 January 2024 that the base legal office has the five missing exhibits from the Preliminary Hearing Officer's report and can readily remedy their omission. These omissions should be remedied by remand to a military judge for correction in accordance with the procedures in R.C.M. 1112(d)(2).

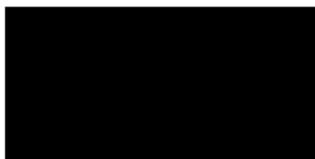
To remedy the failure to allow the Appellant the required time to respond to the victims' submission of matters, the legal office should re-serve Appellant with the victims' submission of matters and allow Appellant the proper time to respond in accordance with R.C.M. 1106(d)(3), prior to re-accomplishment of the convening authority's decision on action.

To correct the error to the EOJ, the base legal office should generate a new, corrected (1) unexpurgated EOJ; and (2) expurgated EOJ. The following corrections should be made to these documents:

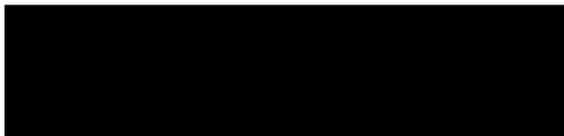
- The date of each new document should be updated.
  - Both the expurgated and unexpurgated EOJ should say "corrected copy – destroy all others."
  - Any corrections to the expurgated and unexpurgated EOJ should be made in accordance with DAFI 51-201, para. 21.12 (i.e. lining out incorrect information and adding and underlining correct information).
  - Both the expurgated and unexpurgated EOJ should reflect the new date of the convening authority's decision on action, once the proper procedures under Rule for Courts-Martial 1106(d)(3) have been complied with.
  - Both the expurgated and unexpurgated EOJ's corrections should reflect that the withdrawal and dismissal without prejudice of Charge II and the Additional Charge will ripen into dismissal with prejudice upon completion of appellate review upholding Appellant's conviction of Charge I.

**WHEREFORE**, the United States agrees the Court should remand the record for correction and corrective action pursuant to R.C.M. 1112(d). If this Court agrees with the proposed changes to the EOJ listed above, the United States suggests that in any remand order, this Court specifically detail for the base legal office and the military judge the changes to be made. This will help ensure that further remands or corrections are unnecessary.

Respectfully submitted,



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Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
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MARY ELLEN PAYNE  
Associate Chief, Government Trial and Appellate  
Operations Division  
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United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Appellate Defense Division on 29 January 2024.



TYLER L. WASHBURN, Capt, USAF  
Appellate Government Counsel  
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Military Justice and Discipline Directorate  
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